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Enloe Medical Center and SEIU, United Healthcare Workers-West. Case 20–CA–32748

January 25, 2006

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

This is a refusal-to-bargain case in which the Respondent is contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on October 11, 2005, the Acting General Counsel issued the complaint on October 20, 2005, alleging that the Respondent has violated Section 8(a)(1) and (5) of the Act by refusing the Union’s request to bargain following the Union’s certification in Case 20–RC–17938. (Official notice is taken of the “record” in the representation proceeding as defined in the Board’s Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On November 10, 2005, the Acting General Counsel filed a Motion for Summary Judgment. On November 16, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contends that the Union’s certification is invalid because the Board erred in overruling its objections to the election in the representation proceeding.¹

¹ In addition, in its response to the Notice to Show Cause, the Respondent contends, among other things, that the Board erred by failing to grant the Respondent’s motion to dismiss the Union’s election objections. However, this motion concerned an election held in a different unit. In any event, the administrative law judge recommended that the Union’s objections be overruled, and no exceptions were filed regarding that recommendation. Accordingly, the Board found it unnecessary to pass on the Respondent’s exceptions relating to the Union’s objections. 345 NLRB No. 54 fn. 5. Consequently, the Respondent’s contention in this test-of-certification proceeding concerning the Union’s objections does not raise a relevant or valid issue.

The Respondent has also filed a motion for reconsideration regarding two 8(a)(1) violations found by the Board. That motion is now pending before the Board. However, those violations were obviously not a part of the Respondent’s objections to the election herein.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Acting General Counsel’s Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a California corporation with an office and place of business in Chico, California, has been engaged in business as an acute care hospital with ancillary clinics and a home health care operation.

During the 12-month period ending September 30, 2005, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$250,000 and purchased and received goods valued in excess of \$5000 from points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that SEIU, United Healthcare Workers-West (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held April 1 and 2, 2004, the Union was certified on August 27, 2005, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time service employees, including Anesthesia Techs, Cancer Registrars, Cardio Cath Lab Aides, Case Management Assistants, Distribution Clerks, EMS Communication Specialists, Technologist Assistants, Van Drivers, Van Drivers/Techs, Receptionists/Van Drivers, Sterile Processing Techs, Cardiovascular Techs (non-invasive), Certified Cardiovascular Techs (non-invasive), E.D. Techs, Homemakers, Clinic Techs (except for the Clinic Techs working

² The Respondent’s request that the complaint be dismissed in its entirety is therefore denied.

in the Employer's Los Molinos Clinic, who are eligible to vote subject to challenge), Transcriptionists I & II, Medical Records Clerks, Mental Health Workers, Monitor Techs, CNAs, CNAs-HHAs, Data Analysts, Chart Analysts, Clerk/Technicians, Lab Assistants, Nursing Assistants I & II, Patient Monitors, Patient Access Reps, Department Clerks (non-business office), Distribution Couriers, Information Clerks, OR Aides, Schedulers, Ortho Techs, Liaisons, Perinatal Techs, Pharmacy Techs, Personal Fitters, RT Equipment Techs, Rehab Aides, Rehab Technicians, Repair Technicians, Surgical Supply Techs, Systems Technicians, Unit Secretaries/CNAs, Unit Secretaries/NAIs, Unit Secretaries, Warehouse Technicians, Workers Comp Liaisons, Patient Support Clerks (non-business office)(except for the Patient Support Clerks working in the Employer's Los Molinos clinic, who are eligible to vote subject to challenge), Facility Workers, Transporters, CNAs/Transporters, Lead Distribution Clerks, Lead Sterile Processing Techs, Lead Information Desk Clerks, Lead Patient Support Clerks, Switchboard Operators, Support Group Facilitators, G.I. Techs, and Computer Operators employed by Enloe Medical Center at its current Butte County, California facilities.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

On about September 15, 2005, the Union, by letter, requested that the Respondent recognize and bargain collectively with it as the exclusive collective-bargaining representative of the certified unit. Since about September 27, 2005, the Respondent has failed and refused to recognize and bargain with the Union.

CONCLUSION OF LAW

By failing and refusing since September 27, 2005, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(1) and (5) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to

bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Enloe Medical Center, Chico, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with SEIU, United Healthcare Workers-West as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time service employees, including Anesthesia Techs, Cancer Registrars, Cardio Cath Lab Aides, Case Management Assistants, Distribution Clerks, EMS Communication Specialists, Technologist Assistants, Van Drivers, Van Drivers/Techs, Receptionists/Van Drivers, Sterile Processing Techs, Cardiovascular Techs (non-invasive), Certified Cardiovascular Techs (non-invasive), E.D. Techs, Homemakers, Clinic Techs (except for the Clinic Techs working in the Employer's Los Molinos Clinic, who are eligible to vote subject to challenge), Transcriptionists I & II, Medical Records Clerks, Mental Health Workers, Monitor Techs, CNAs, CNAs-HHAs, Data Analysts, Chart Analysts, Clerk/Technicians, Lab Assistants, Nursing Assistants I & II, Patient Monitors, Patient Access Reps, Department Clerks (non-business office), Distribution Couriers, Information Clerks, OR Aides, Schedulers, Ortho Techs, Liaisons, Perinatal Techs, Pharmacy Techs, Personal Fitters, RT Equipment Techs, Rehab Aides, Rehab Technicians, Repair Technicians, Surgical Supply Techs, Systems Technicians, Unit Secretaries/CNAs, Unit Secretaries/NAIs, Unit Secretaries, Warehouse Technicians, Workers Comp Liaisons, Patient Support Clerks (non-business office)(except for the Patient Support Clerks working in the Employer's Los Molinos clinic, who are eligible to vote subject to challenge), Facility Workers, Transport-

ers, CNAs/Transporters, Lead Distribution Clerks, Lead Sterile Processing Techs, Lead Information Desk Clerks, Lead Patient Support Clerks, Switchboard Operators, Support Group Facilitators, G.I. Techs, and Computer Operators employed by Enloe Medical Center at its current Butte County, California facilities.

(b) Within 14 days after service by the Region, post at its facilities in Chico, California, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 27, 2005.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 25, 2006

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with SEIU, United Healthcare Workers-West as the exclusive bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time service employees, including Anesthesia Techs, Cancer Registrars, Cardio Cath Lab Aides, Case Management Assistants, Distribution Clerks, EMS Communication Specialists, Technologist Assistants, Van Drivers, Van Drivers/Techs, Receptionists/Van Drivers, Sterile Processing Techs, Cardiovascular Techs (non-invasive), Certified Cardiovascular Techs (non-invasive), E.D. Techs, Homemakers, Clinic Techs (except for the Clinic Techs working in our Los Molinos Clinic, who are eligible to vote subject to challenge), Transcriptionists I & II, Medical Records Clerks, Mental Health Workers, Monitor Techs, CNAs, CNAs-HHAs, Data Analysts, Chart Analysts, Clerk/Technicians, Lab Assistants, Nursing Assistants I & II, Patient Monitors, Patient Access Reps, Department Clerks (non-business office), Distribution Couriers, Information Clerks, OR Aides, Schedulers, Ortho Techs, Liaisons, Perinatal Techs, Pharmacy Techs, Personal Fitters, RT Equipment Techs, Rehab Aides, Rehab Technicians, Repair Technicians, Surgical Supply Techs, Systems Technicians, Unit Secretaries/CNAs, Unit Secretaries/NAIs, Unit Secretaries, Warehouse Technicians, Workers Comp Liaisons, Patient Support Clerks (non-business office) (except for the Patient Support Clerks working in our Los Molinos clinic, who are eligible to vote subject to challenge), Facility Workers, Transporters, CNAs/Transporters, Lead Dis-

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tribution Clerks, Lead Sterile Processing Techs, Lead
Information Desk Clerks, Lead Patient Support Clerks,
Switchboard Operators, Support Group Facilitators,

G.I. Techs, and Computer Operators employed by us at
our current Butte County, California facilities.

ENLOE MEDICAL CENTER